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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAI'I

ROSENDA SAMUEL, Individually and  
as Special Administrator of the ESTATE  
OF RIENDA SUPU; and LEWIS  
SAMUEL,

Plaintiffs,

vs.

UNITED STATES OF AMERICA;  
HAWAII HEALTH SYSTEMS  
CORPORATION dba HILO MEDICAL  
CENTER; JAMES MORRISON, M.D.;  
JOANN SARUBBI, M.D.; KIRK  
WEBER, M.D.; and DOE  
DEFENDANTS 1-100;

Defendants.

UNITED STATES OF AMERICA,

Third-Party Plaintiff,

vs.

CV 15-00141 DKW-KJM

FINDINGS AND  
RECOMMENDATION TO GRANT  
DEFENDANTS JOANN SARUBBI,  
M.D.'S; KIRK WEBER, M.D.'S;  
AND JAMES MORRISON, M.D.'S  
**JOINT PETITION FOR**  
DETERMINATION OF GOOD  
FAITH SETTLEMENT, FILED  
JULY 7, 2017

Judge: Magistrate Judge  
Kenneth J. Mansfield

Trial Date: August 28, 2017

HAWAII HEALTH SYSTEMS  
CORPORATION dba HILO MEDICAL  
CENTER,

Third-Party Defendant.

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FINDINGS AND RECOMMENDATION TO GRANT  
DEFENDANTS JOANN SARUBBI, M.D.'S; KIRK WEBER, M.D.'S;  
AND JAMES MORRISON, M.D.'S **JOINT PETITION FOR**  
**DETERMINATION OF GOOD FAITH SETTLEMENT, FILED JULY 7, 2017**

The Joint Petition for Determination of Good Faith Settlement ("Joint Petition"), filed on July 7, 2017 by Defendants JOANN SARUBBI, M.D. ("Dr. Sarubbi"), KIRK WEBER, M.D. ("Dr. Weber"), and JAMES MORRISON, M.D. ("Dr. Morrison") (collectively referred to hereinafter as "HEPA Defendants"), came on for hearing on August 14, 2017 before the Honorable Magistrate Judge Kenneth J. Mansfield. Ronald T. Michioka, Esq. appeared on behalf of Defendant Dr. Sarubbi; Malia E. Schreck, Esq. appeared on behalf of Defendant Dr. Weber, John Burke, Esq. appeared on behalf of Defendant Dr. Morrison, Janice D. Heidt, Esq. appeared on behalf of Plaintiffs, and Michael F. Albanese, Esq. appeared on behalf of Defendant and Third-Party Plaintiff UNITED STATES OF AMERICA ("Defendant USA"). No appearance was made by counsel for Third-Party Defendant HAWAII HEALTH SYSTEMS CORPORATION dba HILO MEDICAL CENTER ("HHSC"). Plaintiffs filed on July 24, 2017 their Memorandum in Support of the Joint Petition, Defendant USA filed on July 24,

2017 its Statement of No Opposition to the Joint Petition, and Third-Party Defendant HHSC filed on July 24, 2017 its Statement of No Objection to the Joint Petition. No opposition was filed against the Joint Petition.

The Court having considered the Joint Petition, the memoranda in support thereof, the arguments of counsel, and the records and files herein, FINDS and RECOMMENDS that the Joint Petition be GRANTED as follows:

**FINDINGS OF FACT**

1. A Settlement Conference with this Court (Magistrate Judge Kenneth J. Mansfield) was convened on May 26, 2017, in which all parties to this action participated.
2. No settlement was reached at the Settlement Conference.
3. Private mediation with Mr. Keith Hunter of Dispute Prevention and Resolution (“DPR”) was held on May 31, 2017.
4. All parties to this action participated in the private mediation with Mr. Hunter and DPR, including the non-settling Defendant USA and Third-Party Defendant HHSC.
5. The settlement between Plaintiffs and the HEPA Defendants was reached through the private mediation with Mr. Keith Hunter and DPR.
6. Plaintiffs and HEPA Defendants have agreed that the terms of the settlement between them are confidential.

7. The HEPA Defendants filed their Joint Petition for Determination of Good Faith Settlement on July 7, 2017 contemporaneously with their Ex Parte Motion to file the Terms of Settlement Under Seal pursuant to the confidentiality provision of their settlement agreement.

8. The terms of the settlement were submitted under seal to this Court pursuant to the Order Granting Leave to Submit the Terms of Settlement Under Seal, issued on July 20, 2017 [Doc. 172].

### **CONCLUSIONS OF LAW**

1. The decision in *Troyer v. Adams*, 102 Haw. 399, 77 P.3d 83 (2003), requires this Court to consider the totality of circumstances to determine whether the settlement was reached in good faith, including, but not limited to the following factors:

- (a) Type of case and difficulty of proof at trial, e.g., medical malpractice;
- (b) Realistic approximation of total damages that the plaintiffs seek;
- (c) Strength of Plaintiffs' claim and the realistic likelihood of their success at trial;
- (d) Predicted expense of litigation;
- (e) Relative degree of fault of the settling tortfeasors;
- (f) Amount of consideration paid to settle the claims;
- (g) Insurance policy limits and solvency of the joint tortfeasors;
- (h) Relationship among the parties and whether it is conducive to collusion or wrongful conduct; and

- (i) Any other evidence that the settlement is aimed at injuring the interests of a non-settling tortfeasor or motivated by other wrongful purpose.
2. This Court finds that the totality of the circumstances demonstrates that the settlement by the HEPA Defendants with Plaintiff was in good faith.
3. This Court finds no evidence of collusion or improper purpose to harm any non-settling tortfeasor.
4. This Court finds that the purpose of Hawai‘i Revised Statutes (“HRS”) §663-15.5 to encourage settlements is fulfilled by this settlement.
5. Pursuant to HRS §663-15.5:
- (a) The settling HEPA Defendants are discharged from any liability for contribution to any other joint tortfeasor;
  - (b) Any other joint tortfeasor or co-obligor is barred from asserting any further claims against the settling HEPA Defendants unless based upon a written indemnity agreement;
  - (c) The claims against the non-settling joint tortfeasors or co-obligors shall be reduced by the amount of the settlement by the settling HEPA Defendants.
9. Any finding of fact that is a conclusion of law, and vice versa, shall be treated as such.

IT IS SO FOUND AND RECOMMENDED.

DATED: Honolulu, Hawai‘i, August 23, 2017.



/S/ Kenneth J. Mansfield

Kenneth J. Mansfield

United States Magistrate Judge

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*ROSENDA SAMUEL, Individually and as Special Administrator of the ESTATE of RIENDA SUPU, et al. v. United States of America, et al.; CV 15-00141 DKW-KJM; FINDINGS AND RECOMMENDATION TO GRANT DEFENDANTS JOANN SARUBBI, M.D.’S; KIRK WEBER, M.D.’S; AND JAMES MORRISON, M.D.’S JOINT PETITION FOR DETERMINATION OF GOOD FAITH SETTLEMENT, FILED JULY 7, 2017*

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